Inland Counties Legal Services *and* Workers Unidos, National Organization of Legal Services Workers, District 65, United Automobile, Aerospace & Agricultural Implement Workers of America–UAW, AFL–CIO. Cases 31–CA–18436, 31–CA–18601, 31–CA–18926, 31–CA–19292, and 31–CA–19508

June 23, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

On September 29, 1994, Administrative Law Judge Frederick C. Herzog issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified.

The judge dismissed the complaint allegation that the Respondent violated Section 8(a)(1) of the Act by ordering an employee to remove a union button. We find merit to the General Counsel's exception, for the reasons set forth below.

The Respondent operates a public service law office that is funded by the Federal Legal Services Corporation and is under its oversight. On March 17, 1992, the Respondent's supervisor, Roy King, requested that employee Evelyn Frost, a secretary, remove her union button.[1] King advised Frost that she would risk being ''written up'' if she did not remove the button. Frost removed her union button.

Irene Morales, the Respondent's executive director, testified that early in her career with the Respondent she was advised that the Respondent maintained a policy against wearing buttons of any political nature because the Respondent's clients have a wide range of legal problems and come from a variety of social, religious, and political backgrounds. She also testified that from time to time a prospective client will approach the Respondent about a dispute involving a labor union, and that on occasion Frost substituted as a receptionist or notary and thus came into direct contact with the public. Frost testified that she was unaware of any policy preventing the wearing of her union button. Additionally, she testified that she had worn the button in the past and had never been subjected to any discipline for doing so. Her testimony was unrebutted.

The judge dismissed the 8(a)(1) the allegation. He reasoned that Frost's right to wear a union button would normally be protected, pursuant to *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945), but that the right was not an absolute one, and was subject to a ''special circumstances'' test, citing *Control Services*, 303 NLRB 481 (1991). The judge found that the Respondent had shown ''special circumstances'' here warranting the direction to remove the union button. In this regard, the judge noted that the Respondent's action was tied to the public nature of its work and funding, and that the Respondent, therefore, had established a need to avoid open displays of partisanship. Accordingly, the judge dismissed the 8(a)(1) allegation. We disagree.

As the judge noted, the right of employees to wear union insignia while working as a form of expression is protected under Section 7 of the Act.[2] *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945). An employer may, limit or ban however, the wearing of union insignia at work if ''special circumstances'' exist. *Mack's Supermarkets*, 288 NLRB 1082, 1098 (1988). Special circumstances exist if an employer can show by substantial evidence that the wearing by its employees of insignia for a union adversely affected its business or was necessary to maintain employee discipline and that, because of deleterious effects on these interests, the employer's ban on the wearing of such insignia outweighs the employees' statutory right to do so.

Neither the mere possibility that the Respondent's employees may come into contact with a customer or supplier nor an employer's interest in avoiding controversy among its clientele that an expression of union membership or support might engender outweighs the employees' Section 7 right to wear these emblems. Id. *Nordstrom, Inc.*, 264 NLRB 698, 701–702 (1982). Likewise, the pleasure or displeasure of an employer's customers does not determine the lawfulness of banning employee display of insignia. *Howard Johnson Motor Lodge*, 261 NLRB 866, 868 fn. 6 (1982).

[1] The Union button read ''District 65, UAW, AFL–CIO.''

[2] We reject the Respondent's reliance on certain appellate court decisions involving facts distinguishable from those in this case. In *NLRB v. Harrah's Club*, 337 F.2d 177 (9th Cir. 1964), the court found that the button worn had no relation to any Sec. 7 right. The court emphasized that the button was not worn in solidarity with others, during an organizing campaign, or, as was the case here, during collective-bargaining negotiations. In *Davison-Paxon Co. v. NLRB*, 462 F.2d 364 (5th Cir. 1972), the court found that the wearing of a button stating ''Vote Retail Clerks Union, AFL–CIO'' was unprotected. The court emphasized that the button detracted from the employer's marketing plan that was to have its employees model clothing sold by the employer while working in selling areas. In addition, the court noted that the button negatively affected discipline and production because it created animosity between prounion and antiunion employees. Nor is *United States Department of Justice v. FLRA*, 955 F.2d 998 (5th Cir. 1992), cited by the Respondent, on point. There the court found that the wearing of a union button by a border patrol agent was unprotected. The court emphasized that duties of these agents were paramilitary and thus they needed to abide by strict uniform requirements.

An employer seeking to ban union insignia bears the burden of establishing substantial evidence of special circumstances. *Government Employees*, 278 NLRB 378, 385 (1986). We find that the Respondent failed to carry that burden here by presenting substantial evidence warranting a finding that Frost's wearing a union button affected prospective clients, funding,[3] employee discipline, or the provision of services. The Respondent here has shown nothing more than that Frost had some client contact[4] and that on occasion a prospective client had a complaint against a labor organization. These factors do not, in our view, constitute ''special circumstances'' and do not justify prohibiting employees with limited client contact from wearing such a union button. *Nordstrom's*, above.

Regarding the judge's finding that the nature of the Respondent's mission requires that it avoid open displays of partisanship, we note that the the button's content ''District 65, UAW, AFL–CIO,'' is neither political, partisan, or provocative. Cf. *Virginia Electric & Power Co.*, 260 NLRB 408, 409 (1982). Nor does it fall within the limits of the regulations governing the Respondent's operations as discussed above, as it does not align the agency or the wearer with any political party or campaign. Thus, even assuming the Respondent's prospective clients come in contact with an employee wearing such a button, we find that the Respondent has failed to present any evidence of either actual or potential injury. Moreover, as for the speculation of the Respondent and the judge that the button's message might make a negative impression on clients, the Respondent provides no basis for inferring that a union button would prejudice its interests or the interests of its clients. Moreover, the mere possibility of such offense does not outweigh the employees' right to wear such items. *Escanaba Paper Co.*, 314 NLRB 732 (1994).

We, accordingly, find that the Respondent violated Section 8(a)(1) of the Act by ordering Frost to remove a button displaying union insignia.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Inland Countries Legal Services, Riverside, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the remaining paragraphs.

''(a) Barring employees from wearing union insignia.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to bargain collectively in good faith with Workers Unidos, National Organization of Legal Services Workers, District 65, United Automobile, Aerospace & Agricultural Implement Workers of America–UAW, AFL–CIO in the following unit that is appropriate for the purposes of collective bargaining:

> INCLUDED: All employees including staff attorneys, graduate law clerks, paralegals, legal secretaries, clerk-typists, receptionist/clerk typist, accounting clerk/secretaries, program librarians and administrative legal secretaries employed by us at our locations in Blythe, Indio, Montclair, Riverside, San Bernardino and Victorville, California.
>
> EXCLUDED: Confidential employees including administrative assistants, managerial employees including bookkeepers, temporary employees, guards and supervisors including executive directors, senior administrative assistants, full-charge

[3] Morales, the Respondent's executive director, testified that Frost had been advised of the policy on wearing buttons of a political nature. In its brief, the Respondent alludes to the oversight by its funding agency, the Federal Legal Services Corporation, which prohibits the Respondent or any of its employees from intentionally identifying with ''any partisan or non-partisan political activity associated with a political party or association, or the campaign of candidates for public or party office.'' We find that the Respondent's blanket ban, which includes the prohibition against wearing a union button, goes beyond these regulations.

[4] The record shows that the Respondent's secretaries work a majority of their time in an area separate from where prospective clients are greeted and escorted to their attorney. We do not find Morales' testimony, cited above, that Frost was visible to the Respondent's clients and occasionally had direct contact with them dispositive. First, Frost testified that she had worn her button on other occasions without any response from the Respondent. Additionally, the Respondent provided nothing more than conclusionary testimony about the composition of its clientele. Potential offense to clients is not sufficient to overcome the Sec. 7 right, as discussed above.

bookkeepers, controllers and managing attorneys, as defined in the Act.

WE WILL NOT fail or refuse to provide the above-named labor organization with information requested by it that is reasonably necessary or useful to it in representing employees in collective bargaining with us.

WE WILL NOT prevent employees from wearing union insignia.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively in good faith with the above-named labor organization as the exclusive collective-bargaining representative of our employees in the unit described above with respect to the wages, hours, and working conditions of all the employees in the above-described unit.

WE WILL provide the above-named labor organization with information requested by it that is reasonably necessary or useful to it in representing employees in collective bargaining with us.

INLAND COUNTIES LEGAL SERVICES, INC.

Arthur Yuter, Esq., for the General Counsel.
David M. Diver, Esq. (Reid & Hellyer), of Riverside, California, for the Respondent.
Terry Skotnes, of Artesia, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

FREDERICK C. HERZOG, Administrative Law Judge. This case was heard by me in Los Angeles, California, on March 2, 3, 24, 25, 26, 30, and 31, 1993. This case is based on a series of unfair labor practice charges filed by Workers Unidos, National Organization of Legal Services Workers, District 65, United Automobile, Aerospace & Agricultural Implement Workers of America-UAW, AFL–CIO (the Union or Workers Unidos). On September 30, 1992, the Regional Director for Region 31 of the National Labor Relations Board issued a second order consolidating cases, third amended consolidated complaint, and notice of rescheduled hearing (the complaint), stemming from unfair labor practice charges filed by the Union against Inland Counties Legal Services, Inc. (Respondent or ICLS), in Cases 31–CA–18436, 31–CA–18601, 31–CA–18926, 31–CA–19292, and 31–CA–19508. A timely answer to this complaint was filed, and on March 3, 1993, a stipulation of facts was entered into by Respondent, the Union, and counsel for General Counsel.

The hearing began on March 2, 1993, and continued for a total of 7 days, ending on March 31, 1993.

At the hearing, and based on a motion by counsel for the General Counsel, agreed to by both the Union and Respondent, the following paragraphs were severed from the complaint and remanded to the Regional Director for further processing: paragraphs 9, 11, 20(a), 20(b), 21, 22(a), 24, 26, and 27. Further, based on a motion by counsel for the General Counsel, agreed to by both Respondent and the Union, the following was withdrawn from the complaint: paragraphs 15(b) and 25(a) and (b); also withdrawn from paragraph 23, second line, was the word ''physical.'' Thus, the complaint, as amended, alleged generally that Inland Counties Legal Services, Inc. (Respondent), committed certain violations of Section 8(a)(1)[1] and (5)[2] of the Act.

On May 6, 1993, counsel for the General Counsel submitted a motion to withdraw allegation, specifically those allegations that had been extensively litigated concerning the question of whether or not Respondent had violated Section 8(a)(5) of the Act by unilaterally issuing a memorandum setting forth ''Standards for Supervision of Legal Work.''[3] The Union filed a letter advising that I wished to withdraw these allegations, received on May 11. After some seeming confusion, Respondent chose to oppose the withdrawal of the allegations, relying generally on such premises as the importance and novelty of the issues presented and the costs and other expenses it had been put to in defending these allegations. Having considered the matter, I have determined that understandable as Respondent's views may be there is no warrant to deny the General Counsel the sort of control over the content of complaints as is generally exercised by him. Nor, in my view is it necessary in my opinion in order to protect the Respondent's equities. Accordingly, I shall grant the motion to withdraw allegations, and shall make no findings of violative conduct based thereon. To the extent that such conduct has been litigated, however, and is demonstrative of the efforts of the parties to either reach, or obstruct, agreement on a collective-bargaining agreement, I have determined to fully utilize the evidence adduced on the issue, giving such evidence the weight I deem appropriate.

All parties appeared at the hearing and were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Based on the record, my consideration of the briefs filed by counsel for the General Counsel and counsel for Respondent, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, and it is admitted, that Respondent is a nonprofit corporation duly organized and existing under

[1] Sec. 8(a)(1) of the Act provides that ''It shall be an unfair labor practice for an employer . . . to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.''

Sec. 7 of the Act provides that ''Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).''

[2] Sec. 8(a)(5) of the Act provides that ''It shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).''

[3] Pars. 10(a-c), 12, 13, and a portion of par. 28 of the third amended consolidated complaint.

the laws of the State of California, with an office and principal place of business in Riverside, California (the facility), where it is, and at all times material has been, engaged in providing legal services; further, that in the course and conduct of its business operations, Respondent annually derives gross revenues in excess of $250,000 and annually purchases and receives goods or services valued in excess of $5000 from sellers or suppliers located within the State of California, which sellers or suppliers receive goods in substantially the same form directly from outside the State of California.

Accordingly, I find and conclude that at all times material Respondent is, and has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that at all times material the Union is, and has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Labor Relations History*

Respondent is a nonprofit corporation that delivers legal services to indigent people in the areas where its five offices are located. As such, it is funded by public funds, largely obtained from an agency of the U.S. Government, the Legal Services Corporation, and, of equal import, necessarily subject to control by that grantor.

At all times material Irene Morales, Henry Ares, Michael Dewey, Roy King, and Don Clark have been agents of Respondent within the meaning of Section 2(13) of the Act, and supervisors within the meaning of Section 2(11) of the Act; and since about November 14, 1989, the Union has been the 9(a) representative of the specified unit of Respondent's employees.

Respondent became aware of the Union through a letter dated August 9, 1989, from Terry Skotnes, the Union's organizer. Skotnes was later permitted to address Respondent's board of directors at the September 1989 meeting. Respondent and the Union signed a stipulated election agreement on October 2, 1989, providing for an election on October 30, 1989. Following certification on November 14, 1989, Morales persuaded Respondent's board to permit her to negotiate an end-of-year stipend with the Union, instead of allocating the funds for equipment.[4]

[4] Although both Michael Givel, an employee who served as the Union's president and as a negotiator for the Union, and Skotnes claimed that the stipend was granted annually by ICLS, I find and believe that this was not the case: Morales, whose testimony was superior to either of them, testified that the stipend had only been granted on two other occasions since the early 1980s.

B. *The Union's Version of the Negotiations*[5] *and Arguments*

1. The request for information

In a letter dated May 15, 1992, the Union requested that it be provided with certain information. Specifically, it requested a current unit census with each employee's salary, hire date, date of birth, gender, residential zip code, as well as information related to each employee's existing health care coverage. Terry Skotnes testified that Respondent has never responded to this information request, even to the point of questioning the Union's basis for its request. Respondent never informed the Union, or asserted at trial, that any of the requested information was unavailable, or would have been onerous or burdensome to collect.

2. The direction to remove union button

On or about March 17, 1992, at Respondent's San Bernardino office Supervisor Roy King requested that Evelyn Frost remove a union button. Without contradiction, Frost testified that she had worn a union button to the office approximately six or seven times, that King saw her wearing her union button on these occasions, and except for March 17, King never said anything to her about wearing a union button.

In the morning of March 17, 1992, for the first time, King told Frost that pursuant to directions from Executive Director Morales, he was directing Frost to remove the union button under penalty of being ''written up.'' Frost testified, still without contradiction, that where she was working on March 17 was not within the normal view of Respondent's clients, and in particular on that day ''I was busy doing some declarations and I was not going to see anybody.'' Finally, Frost testified that she was aware of no dress code, that wearing the union button did not affect her job performance, and there were no safety considerations involved.

3. The alleged assault

On January 8, 1993, a collective-bargaining meeting took place. Present for the Respondent were Ares, Morales, Dewey, and Chavez. Among those present for the Union were Evelyn Frost and Michael Givel. At one point in this meeting Respondent, through Ares, presented its health insurance proposal. During Ares' explanation Frost asked him if it was correct that employees were being required for the first time to contribute 30 percent of the cost of this insurance; Ares told Frost that was correct. Frost then stated, ''This is ridiculous.'' There is no dispute that immediately after Frost's ''This is ridiculous'' comment, Ares directed the entire management bargaining team to get up and begin leaving the room. Frost testified that ''[Ares] became very upset and angry. The entire management team got to their feet''

[5] The following version of events is taken largely from counsel for the General Counsel's brief, together with the stipulations of fact entered into by the parties.

and (inferentially Ares) stated, ''We're leaving.'' Givel testified, ''Mr. Ares got physically enraged. His cheeks were red. He looked very, very angry. And he said, ''[T]hat's it. We're leaving.'' Even Morales testified that after Frost said, ''That is ridiculous,'' Ares said, ''Let's go.''

To this point no obscenities were uttered by anyone. Morales testified that after asking about the employee 30-percent contribution Frost was ''muttering things.'' Ares testified that after Frost's question ''she was going on. And it wasn't stopping.'' Unlike Morales, Ares did not characterize Frost's comments as ''muttering,'' but claimed ''she continued and was getting louder.'' Neither Ares nor Morales testified what Frost was saying, or how she was assertedly disrupting the meeting. All the witnesses have testified that the management team, at that point, began to leave. Ares said, ''We started going out that aisle.'' Morales said, ''[W]e got up to go.''

As the management team was leaving the room Frost said, ''You don't have to leave. I'll leave. He's so full of shit.'' As the management team started walking out Morales heard Frost say, ''[Y]ou are full of shit.'' Ares testified, ''So, I stood up to leave and was going down that way, and [Frost] yelled out, 'he is full of shit.''' Only Ares claimed that Frost ''yelled out'' the comment. Givel and Frost testified that her comment was ''under my breath,'' and even Morales testified only that ''I heard Evelyn say . . . .''

On Ares hearing Frost's ''you are full of shit'' comment, Ares demanded that she repeat it. She replied, ''You heard me.'' Frost testified that Ares then ''turned on his heel and he came over to me, and he got within a foot of my face, very angry, and I was absolutely certain that he was getting ready to hit me.'' Frost saw Ares' actions as ''a threat, and I definitely perceived a threat. There is no question in my mind, or in the mind of anyone else who was present, that there was a definite threat.'' Frost reiterated that ''There was no question in my mind that he really planned to hit me. The next day I was broken out in a rash.'' Without contradiction, Frost asserted that the rash covered her face, neck, hands, and whole body, and it persisted for several days, requiring medical treatment. She stated that such a rash was unique in her experience, and according to her doctor possibly caused by extreme stress, which Frost clearly attributed to Ares' actions toward her at the January 8 meeting.

Gives recollection of the confrontation corroborated Frost's testimony: ''Mr. Ares with his fists clenched and still visibly enraged got into her face. He was about twelve inches at the most from her. He was pointing at her. He was telling her—he told her to take it back and apologize. And it appeared to myself, as well as talking to other team members, that he looked like he was on the verge of hitting her.''

Ares testified that ''I am at the doorway,'' and that ''I am halfway going out the door'' when Frost made her ''full of shit'' comment. After requesting that she repeat her comment, Ares testified, ''She said I am leaving . . . picked up her fur coat . . . and started for the door. And I was *standing where the door is, so I moved out of the way*, and she stormed out.'' Yet Ares twice asserted that he never came closer than 7 or 8 feet from her! ''Judge: How close did you come to Ms. Frost?'' ''Answer: I would say about seven or eight feet.'' ''Judge: And the closest you ever claim you ever came was seven or eight feet?'' ''Answer: That is correct.''

Morales testified that she started out the door and went into the hallway as Frost ''bustled to get out,'' indicating that she was in the hallway before Frost exited the room. Dewey testified that he left the room before Morales left; therefore he, too, was out of the room before either Frost or Ares exited.

4. Surface bargaining

The Union and Respondent met for 29 ''official'' (plus several ''side-bar'') collective-bargaining meetings from March 8, 1991, to March 19, 1992. The Union's initial proposal was presented prior to the first meeting; Respondent's first proposal was presented to the Union just prior to the ninth meeting.

The Union claims that from the commencement of bargaining through the 24th meeting on December 11, 1991, the Union's initial positions evolved and moved substantially in the direction of what an employer would find more amenable.

Over the course of the negotiation year counsel for the General Counsel argues that Respondent engaged in substantial conduct reflecting its ''demonstrable hostility toward the bargaining process.'' For example twice Respondent walked out of bargaining meetings without adequate provocation, but merely to assert its control of, and frustrate, the process. The first time, at the meeting on August 6, 1991, Ares asserts that Givel called him ''a shit'' for making a comment about negotiations. Ares does not even claim there was any other provocation or disturbance. Givel's comment was sufficient, by itself, for Ares to direct the entire management bargaining team to get up and leave the negotiating room, demanding ''an apology within five minutes or we are going home.'' Ares and the management team retired to the hotel lobby, to wait the allotted 5 minutes for the demanded apology, which did not come. The management team then went to dinner in the hotel. About 45 minutes later, during dinner, Givel approached Ares at his table. Givel said, ''For what it is worth, I apologize. That was not an appropriate comment. I understand that.'' Ares responded, ''Well, Mike, that is just not good enough anymore. This back and forth stuff, and you can do whatever you want, and we will get back together again isn't good enough.''

The General Counsel argues that the second time occurred at the January 8, 1992 meeting, as detailed above. The General Counsel claims that Ares directed the management team to get up and leave the bargaining room after Frost's ''that is ridiculous'' comment, before the ''you are full of shit'' comment was even made. Morales testified that Frost was ''muttering things,'' and Ares testified that ''she was going on. And it wasn't stopping,'' but, argues the General Counsel, neither testified in any specific way how Frost was disrupting the meeting or impeding progress. After Frost's ''you are full of shit'' comment and after she had left the room Ares said to the remaining union bargaining team, ''Hey, if you want to keep meeting with us, I want an apologize [sic] from this person here or we are not going to meet anymore.'' As the meeting broke up, either Givel or Union Vice President Robinson came into the hallway and said to Ares, ''For what it's worth, I am sorry for her behavior.'' Ares responded, ''Hey, fellows, we have a history of this. It doesn't do any good, and *it is just not good enough. I want her to*

apologize in front of the rest of the team here, and that will signal that we are really serious here.'' (Emphasis added.)

Counsel for the General Counsel also asserts that there are two clear examples of Respondent's controlling and unreasonable approach to the bargaining process. First, at the July 30, 1991 bargaining meeting Ares testified about Respondent's union business proposal, which reads at section 2: ''Stewards will normally investigate violations of this Agreement during non-working hours. Any investigation during working shall [sic] shall neither be excessive nor interfere with job duties.'' Ares told the Union:

> I will let you investigate, and you can come and visit as the business agent, and we won't get picky about how much time stewards spend investigating and you can meet with management, and it is all on pay.
>
> Q. What do you mean can investigate?
>
> A. Grievances, if they so desire, on company time. Well, it is on their time, but if it went into company time, we are not going to be tick-tack about it.

Later in his testimony Ares was asked whether he granted the Union time to investigate grievances during working hours, without loss of pay. He responded:

> No, no. I corrected myself. I said during non-business time, but if it slipped into business time, it is not a major problem with us. I will give you language on that across the table, *but I am not going to put it in writing* that you could do it during business hours.
>
> Q. So, your written proposal did not reflect that in strict terms?
>
> A. No, it did not. *But I gave them my word across the table*, that we wouldn't be that strict on it.
>
> Q. But you refused to put that in writing?
>
> A. That is correct.

According to counsel for the General Counsel, this shows that Respondent adopted a tone of ''trust me, I'm the negotiator, but I won't put it in writing'' and as such is an indicia of bad-faith bargaining.

The second example occurred at the December 16, 1991 meeting when the Union proposed Respondent give employees the annual Christmas bonus, as it had historically done. Skotnes made clear that this proposal was not intended to be part of the collective-bargaining agreement. Ares testified, ''[A]nd here we are in December, and they are the ones keeping us from an agreement, wanting a Christmas bonus. I found that extremely ludicrous, and I just said, Christmas bonus, I can tell you what we are going to tell you. I can't believe your proposal.'' The Union asked him just to take a look at it and to get back on it. Ares continues, ''I just said, 'Well, I know—certainly you have been talking to us about not considering economic packages, and you can't have it both ways, so undoubtedly you are going to get a big fat no on a Christmas bonus. You don't deserve it. And apparently, it had been a tradition for many years.'''

The General Counsel also attacked the actions of Morales, as she represented Respondent in negotiations. Although he claims that Ares provided the most fodder for the conclusion that Respondent's intent during bargaining was inimical to good faith and designed to undermine the process, Morales also made her contribution. For example she testified about her view of the Union's paralegal proposal, article II–A. This proposal, at section 4, in essence asserts that court decisions and laws authorize unlicensed advocates, including paralegals, to represent clients in Federal, state, and local administrative hearings; and based on this right Respondent should recognize that there is neither a legal or ethical requirement for authorization by a licensed member of the California Bar in order for unlicensed advocates to engaged in such representational activities. Morales testified that she saw this proposal ''[A]s paralegals wanting to practice law without a license.'' Notwithstanding the feigned umbrage taken by Morales, it is absolutely without dispute that the language of the Union's proposal is a correct statement of the law. See Board's Rules and Regulations, Section 102.38, which explicitly provides that ''Any party shall have the right to appear at such [administrative] hearing in person, by counsel, *or by other representative*, to call, examine, and cross-examine witnesses . . . .''

According to counsel for the General Counsel, another indicia of Respondent's intent to frustrate bargaining was reflected by its position on the subjects covered by its management rights clause. The first management rights proposal was submitted by Respondent on August 15, 1991; its second and expanded version was submitted at the final meeting on March 19, 1992. Respondent's philosophy behind the management rights clause was, as Ares stated, ''management must maintain its management rights . . . . We already have those rights, and we are not giving them up.'' Testifying as the experienced labor negotiator he claimed to be:

> Q. In your understanding, are the management rights, as you have phrased them . . . are they non-mandatory or permissive subjects of bargaining?
>
> A. They are non-mandatory . . . if a union can bargain, they can ask for anything they want. If management so desires to give them some of these management rights, then they will certainly take them.''

The language of Respondent's management rights proposal is certainly very broad, explicitly encompassing, inter alia, the right to ''select and hire, discipline and discharge employees, establish and require employees to meet standards of performance . . . establish new positions, increase or decrease, or eliminate the number of positions [and] . . . decide the work to be performed.'' Further, this proposal provided that Respondent has the right to:

> make reasonable rules of procedure and conduct to maintain order, safety, and efficiency; and from time to time have the right to change or modify these same rules . . . [as well as] transfer, promote or demote employees, layoff or otherwise relieve employees from duty for lack of work and when necessary subcontract work normally performed by bargaining unit employees.

Beyond the specifics of the provision itself, Ares testified that ''caseload,'' ''transfers,'' the ''library,'' ''intake,'' and ''clerical workload'' were all ''management right types of items and types of proposals that we were not interested in giving up to the Union . . . those are items we were not about to concede to employees or to the Union to make decisions upon.'' And, further, ''Certainly, [the Union has] a right to ask and to negotiate for anything they wish to talk

about, and I have never taken a position that I am absolutely refusing to discuss it. My position was, we are going to claim those types of things are things that we at ICLS do not wish to give to the Union, and certainly not in this first contract.'' Later, as a question to Ares:

> You regarded such matters [caseloads] as being a management prerogative, and whether you were required legally to bargain about them or not, it was something that you did intend to fight to preserve solely as a management prerogative?
>
> A. That is correct.
>
> Q. Is that one of the issues which is part of what you view as the current impasse?
>
> A. Yes, sir.

Finally, Ares stated to the Union, ''If any of these are a problem, we can address those types of problems, but I do not want to see these types of proposals in our contract, and I did not want to open the door to the usurping of management's responsibilities and rights. The direction I am going to head in this negotiation is to maintain these management rights. I will be willing to address any problems on the side.'' (Emphasis added.)

As counsel for the General Counsel sees it, as reflected by Ares' comments on the enumerated subjects, including those listed in Respondent's management rights proposals, Respondent had no intention to bargain about any of these subjects. Although Ares recognized the Union's right to talk about or propose anything, according to counsel for the General Counsel, it is apparent that talk was the limit of Respondent's willingness to hear. As he sees it, on these matters, there is a total absence of evidence showing Respondent's open mind and sincere desire to reach agreement, as well as indicia that it ''knew [its proposals] were totally unacceptable to the Union and which, unless modified or deleted, would preclude agreement.''

Further indicia, in the General Counsel's view, of Respondent's undermining the bargaining process include its admitted abrogation of agreed-to bargaining rules. As set forth in the stipulated record, the parties agreed on March 26, 1991, that ''Non-economic issues will be negotiated first.'' As Skotnes explained the Union's rationale:

> We had experienced in other negotiations, especially first contract negotiations, when the economic items hit the table that sometimes that took a lot of the wind out of bargaining around the non-economic items which are very important, that once you start talking about money, people tend to forget the important items that are in the basic first contract agreement like seniority.

There is no dispute, says counsel for the General Counsel, that Respondent introduced economic proposals for discussion at the September 5, 1991 bargaining meeting, explicitly in violation of the agreed-on bargaining procedure. It adduced many reasons supporting its decision to violate this agreement, however, all basis asserted were unilateral: The Union never implicitly or explicitly agreed to the modification in procedure. Initially, on being asked, ''Q. And during the course of the bargaining sessions, were these ground rules modified in any fashion?'' Ares testified, ''A. I would say so, a number of times.'' On being asked for specifics Ares later modified this position on cross-examination. He was asked whether there were ''any instances that [any of the ground rules were] altered when one of the parties was not in mutual agreement with the alteration?'' He replied, ''A. No. No, I cannot.'' Morales asserted that the Union broke the ground rules earlier when it presented its August 22, 1991 proposal, by its incorporation into article 59 of that proposal major sections of Respondent's personnel manual that to some degree encompasses economic issues. Although the Union explicitly objected to Respondent regarding breaking the ''non-economics first'' ground rule, however, Morales admitted she never informed the Union of her view that its August 22 proposal may also have violated the rule, serving as either an excuse or predicate for Respondent's own violation. Further, it is evident that no ''economics'' part of the Union's article 59 proposal was made the subject of discussion at the bargaining table; rather it is apparent that such inclusions, like similar inclusions in the Union's initial bargaining proposal, were made for completeness and later discussion. Although it is not asserted that the ground rules amounted a contract subject to the strictures of section 8(d), it is contended that Respondent's breach of the agreed-on procedure was one additional factor reflecting an attempt to frustrate bargaining by introducing new and potentially contentious items into the discussion basket when there was little agreement on existing proposals.

Counsel for the General Counsel points out that the Board has held that in determining whether there was a lack of good-faith effort to reach agreement, it could consider the presence of unreasonable bargaining demands. Although the Board has disclaimed any intent on passing on the acceptability of each proposal, the insistence on ''extreme proposals'' could be part of the evidence considered in determining whether a demand was designed to frustrate agreement. Here, in addition to some of the items reserved in the management rights clause, Respondent's revised arbitration procedure can be viewed as an extreme proposal, one foreseeably objectionable to the Union.

In Respondent's May 14, 1991 proposal, arbitration was provided using the FMCS as a source of arbitrators. On November 6, 1991, Respondent presented its revised grievance procedure proposal, which provided that an arbitrator be chosen from the Judicial Arbitration & Mediation Service (JAMS). As Givel testified without contradiction, JAMS is a service that would cost $350 per hour plus expenses. Because Respondent's arbitration proposals required the loser to pay all expenses, this proposal effectively prohibited a small bargaining unit from taking all but the most blatant and egregious contract violations to arbitration. Counsel for the General Counsel asserts, ''Certainly including such a provision can only be with the intent of frustrating the process to avoid reaching an agreement, notwithstanding Respondent's professed explanation.''

The General Counsel also asserts that another example of Respondent's attempt to control, and thereby frustrate the bargaining process is evidenced by it conduct in canceling the December 19, 1991 bargaining meeting. The Union presented a package proposal to Respondent at the meeting on December 11, 1991. No substantive discussion took place at that time, or at the following meeting on Monday, December 16, with regard to the Union's proposals, which represented substantial movement from the Union's earlier positions. At

the Tuesday, December 17, meeting, for the first time, Respondent reviewed the Union's new proposal. Givel testified, ''Mr. Ares said that they reviewed [them], they didn't like them, they didn't meet management's needs and they were leaving.'' Ares, a bit more expansively, testified that he responded to the Union's December 11 proposals by saying:

> There is nothing new here. What these are is the same proposals that you had made on March 8th that are typed. It is a nice looking package, but it is still management rights taken over by the Union. There was language differences and some movement, but in essence the core of a basic agreement was not there. It was still basically the same package that they had been stressing for the last nine or ten months.
>
> There was nothing new in the union proposals that said that the management of ICLS will be run by the management of ICLS, and so I didn't see that there was any real movement.

Ares testified that his response to the Union's December 11 proposal was ''I wanted to send [the Union] a signal that we were not going to change our position, and we were going to be consistent with that. So, that was the emphasis from our side.'' Therefore, instead of bargaining based on the Union's new proposals, or even engaging in substantial discussion of at least the elements in the proposal that Ares acknowledged had reflected some movement, Respondent simply ''broke off negotiations and just walked out.'' It was only 8:30 or 9 p.m. Without dispute, Respondent then canceled the meeting that had been scheduled for Thursday, December 19. See Respondent's letter of Wednesday, December 18, which confirmed this cancellation. In this letter Respondent reiterates, as the basis for its action, that ''the Union did not move substantially on the proposals management had previously presented to the Union.'' According to counsel for the General Counsel, not only does Respondent's position reflect intransigence on its own management rights proposals, but further demonstrates that it sought to control and thereby frustrate the entire bargaining process by precluding agreement, or even discussion on the subject in which the Union's positions had changed. Also, Ares misstates the extent of Respondent's own proposals as of December 17. On direct examination he testified, ''We basically that evening emphasized the fact that they had a complete agreement from us already that encompassed 15 percent wage increases and the like which I pointed out numerous times, a complete set of language proposals.'' According to counsel for the General Counsel, however, it later appeared that Ares incorrectly asserted that Respondent's proposals were complete, that its health plan, pension plan, and the contractual clauses related to preamble, duration, and severability were absent.

Another of counsel for the General Counsel's examples of frustration related to meetings concerned the June 4, 1991 meeting that Respondent failed to attend. At the end of the May 21, 1991 meeting Ares claims that the Union told him, ''unless I gave them written counters there wouldn't be anymore meetings.'' ''Q. So, they were refusing to meet with you again until they got written counter proposals?'' ''A: That is right.'' About a week after the May 21 meeting Ares asserts he telephoned Givel to set up another meeting. He claims Givel responded, ''No, you didn't give us counters on all our proposals, and we told you that was key.'' And again, ''I subsequently called Mike [Givel]. He said, You didn't give me counters. I am not going to meet with you . . . he would not meet until he received in writing written counter proposals.'' Ares then claims he spoke to Union Committeeman Steve Robinson, and again to Givel to set up a meeting; both times he was rebuffed. Finally, Ares testified that he twice called Skotnes, who never returned his calls.

Givel specifically contradicts Ares' assertions: the Union did not inform management either that it would refuse to meet again until it received management's counterproposals, or that it would not give its own counterproposals until it had received all of management's counterproposals to the Union's earlier positions. Givel unambiguously testified that he set up a bargaining meeting with Ares for June 4 during the phone call Ares made shortly after the May 21 meeting.

Another example, in counsel for the General Counsel's view, of Respondent acts that specifically frustrated bargaining occurred at a meeting in August. Givel testified that during one of the ''sidebar'' meetings he had with Ares, there was ''written'' agreement by Ares on reducing the number of months required for a temporary employee to be included in the unit from 12 to 3, as was sought by the Union. Yet on returning to the regular bargaining meeting, Respondent without explanation reverted to its original 12-month position. Givel testified that this event was an example of the frustration that led to the dissolving the small group formula.

The January 8, 1992 bargaining meeting ended abruptly after the alleged assault on Evelyn Frost. Thereafter, Respondent sent two letters to the Union. In the first, dated January 30, 1992, Respondent specifically acknowledged that it had informed the Union on January 8 that ''there were to be no negotiating sessions until Evelyn Frost apologized to the management team.'' In its second letter of February 6, 1992, Respondent reiterated that it continued to refuse to meet and bargain with the Union until: (1) a written apology was received from Givel; and (2) written assurance that Frost would publicly apologize at the next meeting. It is the General Counsel's position that Respondent is absolutely not privileged to refuse to bargain in this circumstance. It is noted here as one more very substantial indicia of Respondent's approach to its bargaining obligation and its intent to ultimately frustrate the bargaining process.

Notwithstanding its walking out of the January 8 meeting, and its twice-reiterated refusals to meet and bargain thereafter, on March 5 Respondent finally did agree to set up a new bargaining meeting. The scheduled date was March 19, 1992, representing the longest hiatus in the history of these bargaining negotiations.

As the March 19 meeting began, three ICLS Program Managers were present for the first time. Contrary to Respondent's position, however, Givel testified that Ares stated these three program managers were new bargaining team members who would be in attendance from then on. Ares began the meeting:

> I told them from the beginning—I said, fellows, if we can't get an agreement, we don't meet. This is the night that we need an agreement . . . . If you are serious about an agreement and get these management rights proposals of your[s] off the table, we can have an agreement tonight. This is a great package for the employees and the members of this Union.

Ares then presented Respondent's latest proposal that even Morales acknowledged the Union would find less acceptable than its prior proposals. Ares stated that there were three totally new proposals: severability, preamble, and term of agreement, and ''There are 22 proposals [of the total 29 proposals] that are the same. Maybe there is a little bit of some change, minor, to make it flow on the 22. There are four that are different.'' Ares noted the four major different proposals, including grievance procedure, severance pay/layoff, union security, and checkoff. After presenting the proposal, the Union retired to caucus and examine the new proposal.

During this initial caucus, which lasted about 90 minutes, the union team examined the new proposal to locate the changes from earlier proposals, and to assess the new differences. During this process the Union discovered that there were many changes that had not been itemized by Ares. For example, while Ares had alerted the Union to Respondent's deletion of the checkoff provision in the new proposal, not until the Union examined the proposal in caucus did it discovered that the union-security clause was also substantially (and from the Union's perspective) changed to a much more regressive proposal. Other parts the Union felt were misrepresented by Ares in his presentation included the health and safety committee article, the vacation article, and leave of absence article. As Skotnes testified, ''It disturbed us quite a bit that, in fact, there were more things that had been changed than had been told us in the summary and we realized it was quite a lengthy document and we needed to go over it in more detail.''

After the caucus, about 7 p.m., Givel informed Respondent that the Union needed more time to study the new proposal, that a new bargaining meeting should be set up. Ares responded that management wanted to bargain that night, and would not agree to give the Union time to study the proposal. The Union raised the point that Respondent had been given time to take home and examine its last proposal when it was presented at the December 11 meeting, and in fact there had been no bargaining on the Union's December 11 proposal until the meeting on December 17. Respondent called for a caucus, which lasted about 20 minutes.

The parties returned, and for a short period discussed not substance but whether bargaining should continue that night, as was preferred by Respondent, or at another time, as was preferred by the Union. This discussion was followed by another 15 to 20-minute caucus. On return, Morales gave a speech stating her position, admittedly reading from a prepared text. After her speech the Union called another caucus. As Skotnes testified, ''We were a little bewildered. We didn't quite understand why they were insisting that night to proceed when what we were asking for was to really do justice to their proposal . . . . So we decided we were going to stand our ground and again request dates for bargaining.'' At this point Skotnes estimated it was about 8:30 p.m.

When the parties reconvened Skotnes told Respondent that the Union wanted to bargain, but it also wanted to take a close look at the proposal, pointing out that it was patently regressive in some areas, noting union security in particular. He emphasized that the Union wanted to continue bargaining. At that point Morales stated Respondent's proposal was its last, best, and final offer. Skotnes asked her, ''How can you expect us to conclude a contract tonight after you hand us that regressive proposal?'' Morales responded, ''[I]f [the Union] didn't bargain that night she would never meet with us again.'' Skotnes asked her to calm down, that she didn't mean it. Morales then reiterated, ''that she would never meet with us again.''

Morales admitted she said, ''If you go home tonight, I am not going to meet with you again.'' And again, ''If you go home tonight and you don't—without bargaining with us, I am not going to meet with you again.'' Ares, quoting Morales, ''You leave me no alternative but to believe in fact you don't want an agreement, and this is going to be the last time we meet.''

There is also little dispute that the Union's position at this meeting, as noted above, was it wanted to study the proposal, but definitely wanted another meeting to bargain about it. Morales was asked, ''Q. Did the Union make it clear that we wanted to return to bargain after looking at your proposals?'' She answered, ''A. Yes, you did. When you came and you talked, you made that statement at the very beginning.'' Only Ares could not accurately recollect this critical request. Ares was asked, ''Q. To your recollection, did anybody from the Union ask for another meeting?'' Ares replied, ''A. No.''

According to counsel for the General Counsel, to the degree that the testimony of Skotnes and Morales is different regarding events and statements at the March 19 meeting, Skotnes should be credited.

On March 24, Morales sent a long letter to the Union, in which she reiterated that Respondent's proposal was its last, best, and final offer; the Union was given a deadline of April 15, 1992, to accept it. Specifically, Morales' stated, ''Please advise us by letter of your acceptance.'' By letter to Morales dated March 31, 1992, Skotnes requested several specified dates in April for bargaining meetings. Morales responded by letter to the Union on April 13, 1992, stating, ''Inasmuch as there have been no new developments, or communications from the union indicating that, in fact, they would be willing to accept our last proposals, we see no reason to meet with the union.'' Although Morales in part predicated her refusal to meet on the fact that ''there have been no new developments,'' she also testified that in the history of the current bargaining neither the Union nor Respondent ever provided the other side with a response to a proposal outside of a bargaining meeting ''because we had wanted the bargaining to take place at the table.'' The Union agreed that there had never been an occasion when it responded to any company proposal outside a bargaining meeting.

As a final point, there was substantial testimony regarding attempts by the Union to have outside parties intervene in the process as mediators, or to try and get the bargaining meetings restarted. None of these efforts was successful.

C. *Respondent's Version of the Negotiations*[6]

Almost immediately following the Union's certification, Morales was advised by Skotnes in a letter of an alleged violation of the Act concerning health insurance. Skotnes stated, ''[T]he Union will do whatever is necessary to protect our members including the filing of Labor Board Charges and other actions.'' In response to the insurance issue, Morales

[6] The following version of events is largely as related in Respondent's brief, together with the stipulations of fact entered into by the parties.

told Skotnes that she was willing to set up an insurance committee, which Skotnes agreed to, but failed to follow up on.

The Union next alleged a violation of the Act when Givel was transferred only a few miles from the Riverside ICLS office to the San Bernardino office. Morales met with Skotnes and Givel, in an attempt to address Givel's concerns as well, despite the claimed ''business necessity'' of the move. As Morales testified, an unfair labor practice complaint did not issue on either issue.

As viewed by Respondent, since then, the Union has lived up to its promise to ''file Board Charges and other actions.'' By the time that this consolidated complaint, including 5 separate charges, came to hearing, there were 13 charges filed by the Union, each involving multiple issues and all involving substantial time spent in reply. Ares' later pronouncements that the Union was ''charge happy'' reflected Respondent's view of the Union.

Respondent also came to view the Union as ''grievance happy.'' In 1990, Richard Bittner, a Workers Unidos member and official, filed over 100 grievances on behalf of the employees generally, over issues such as community education, community workers, clerical, and caseload, which ultimately became incorporated into the Workers Unidos' contract proposals of September 1990. Givel testified that Bittner was the lawyer's bargaining representative and admitted on cross-examination that the Union filed an unfair labor practice charge concerning ICLS' purported failure to process Bittner's grievances.

Bargaining actually commenced between ICLS and the Union at the end of 1989, concerning the stipend, and all bargaining unit employees received bonuses before Christmas.

Later, in a letter dated March 18, 1990, the Union, through Givel, submitted a request for information and bargaining commenced over the release of information, the costs, and the relocation of the ICLS Riverside office. Negotiations involving the use of ''voice mail,'' the phone system, office security, earthquake training, and the location of a copy machine also occurred during this time.

After three sessions in April and May 1990 concerning bargaining over the information request the Union declared an ''impasse'' and walked out. The Union then requested the information directly from Joseph Cohen, the chairperson of the ICLS board of directors. In the meantime, ICLS urged the Union to return to the table. It also provided the Union with the extensive and specific information it had requested in November 1989 concerning health insurance policies, premiums, including both the Kaiser and Nebo insurance plans, and dental plan information that ICLS continues to utilize to the present. This information was provided in February 1990, May 1990, and later supplemented in November 1990, with wage and benefit information, by employee, throughout the organization.

Nevertheless, the Union accused ICLS of bad-faith bargaining. For example, although Skotnes testified that he had not received the wage and benefit information later requested on May 15, 1992, Respondent claimed that this information was current and comprehensive, as provided by ICLS at the end of November 1990 when it was sent to the Union's bargaining team member, Russell Jauregui. As Morales' November 20, 1990 letter indicates, she was responding to Jauregui's October 1990 correspondence with the updated wage and benefit information in accordance with the instructions given by the Union in Givel's March 26, 1990 letter.[7]

By March 1991, ICLS had been pushing the Union to establish dates to commence the substantive negotiations. In the meantime, although the Union had declared an ''impasse'' with respect to the information request, Givel once again addressed the board of directors concerning the release of information issue. In a letter to Givel dated March 4, 1991, Morales set forth a succinct synopsis of the attempts to bargain over the information issue and the status of negotiations through February 1991. Morales stated, the *only* information request by ICLS from the Union during that time concerned the IRS status of the pension plan proposed by the Union. Rather than providing a response, the Union characterized this request as failure to bargain in good faith and ''delaying tactics.''

On February 13, 1991, by letter, Workers Unidos expressed its desire to commence substantive negotiations. Attached to that letter was a letter from Victorville bargaining unit members requesting that Workers Unidos ''start immediate negotiations on salary increases and worker's benefits'' rather than ''language issues.'' That letter further stated, ''we understand the overall importance of other issues such as sharing in the decision-making process, but we do not feel that linking the salary increases and benefits to these other issues is necessarily beneficial.''

Having received this letter, Morales concluded, despite the numerous unfair labor practice charges that had been filed and the grievances and difficulties in the bargaining process, a ''quick contract'' might be reached. With this in mind, she employed the services of Ares, an experienced negotiator who had negotiated some 50 to 75 collective-bargaining agreements over a period of 20 years. Before negotiations began, Morales advised Ares that this was the charter that both she and the ICLS board of directors requested of him.

Concerned about low salaries last upgraded in 1987 and employee turnover, ICLS wanted to avoid a protracted negotiation. Ares found this unusual charter to get ''a fair agreement reached as quickly as possible'' to be refreshing because it avoided many of the impediments that normally exist when management does not want to reach an agreement.

When substantive bargaining commenced on March 8, 1991, Morales attended the bargaining session with the rest of the ICLS bargaining team, Ares, Michael Dewey, and Margie Chavez. She introduced Ares to the union bargaining team, telling them Ares had been retained as ICLS chief negotiator and that he had authority to negotiate a labor contract for ICLS. Ares' introduction was greeted with enthusiasm by the union team. At that first session, Ares stated that he was to be the chief spokesperson for ICLS. With no professional business agent present, Ares tried to lead the process to set ground rules. He asked Givel, the union president, if he was going to be the chief spokesperson. Givel said no. The Union responded that they all had the right to speak on any and all issues at the table. As Givel testified, the Union had five negotiators and each had equal authority to speak. As Morales testified, this was consistent with their prior negotiations and is evidenced by their earlier letter of

[7] It seems clear from the record that Skotnes did not have a complete union correspondence file.

March 26, 1990: ''[A]ll five members of the bargaining team are authorized to communicate and bargain with Management over all the various issues that will be brought to the table through our contract proposal.''

The union bargaining team consisted of Michael Givel, Evelyn Frost, Russell Jauregui, Steve Robinson, and Habeebah Akbar. Skotnes, the UAW organizer, only assumed the role of providing guidance and advice to the union members and was not part of the union bargaining team.

At the March 8, 1991 session the Union proposed that noneconomic or ''language'' issues be discussed first. In the spirit of cooperation, Ares agreed to this as one of seven written ''ground rules.'' These ground rules were subsequently reduced to writing and signed by the parties at the March 26, 1991 session.

The second bargaining session occurred on March 21, 1991. At that session, Givel made a speech insisting on a ''democratic system in the workplace.'' Ares requested that the Union explain their various noneconomic proposals at that time. Almost immediately after the commencement of this explanation, Robinson accused ICLS of ''surface bargaining.'' As both Ares and Skotnes agreed in their testimony, however, it is typical in bargaining sessions that the parties explain the basis for their proposals. Ares stated that this gave Respondent the opportunity to begin to formulate counterproposals based on the wants and needs of the Union as expressed in the explanation of their proposals.

On the March 26 session, the Union at first refused to continue explaining their proposals until ICLS gave counterproposals. Skotnes, who attended the bargaining sessions for the first time, made a comment to the effect that the Union would not have to make this explanation if Ares had read and understood the proposals before he came to the session.

Ares had to insist on their explanations to know ''why that proposal is important to them'' before they agreed to continue. It was at the March 26 meeting when Ares first met Skotnes that he asked to meet with Skotnes to ''get this thing rolling,'' only to be told that Skotnes lacked authority to bargain.

These explanations continued until the April 9 session when Ares commenced explanation of his assessment of the Union's proposals as he agreed to in order to keep things moving when the Union requested counters to all their proposals. Ares testified that this explanation was given in order to attempt to apprise the Union that many of their proposals were extreme and with hopes of expediting the bargaining process. Ares continued his explanation through April 17, 1991. Throughout this time, there was interaction by the Union concerning Ares' impressions of the Union's proposals. When Ares told the Union that ICLS would not go to the extremes of the Union's hiring proposals, the Union ''said they were strike issues from the second and third meeting.'' It was at these early meetings when ICLS began to find it difficult to deal with because there was no union spokesperson to control the group's outbursts.

In the meantime, ICLS was developing its own noneconomic counterproposals. The concept that both Morales and Ares arrived at was to give substantive language ''up front'' in order to hasten the negotiation process. This approach was chosen to get the Union to reduce its numerous and extreme proposals. Ares was faced with the absence of a union business agent and an inexperienced union negotiating team that had already ''talked strike,'' accused ICLS of surface bargaining, and demanded written responses to all of their proposals, with the stated intention of creating a ''democratic new social order'' at ICLS. By advancing proposals concerning union recognition, union security with checkoff, union representation, probationary employees, discipline and discharge, and a grievance procedure including binding arbitration, ICLS hoped to get the Union's attention so that it would realize that ICLS was serious about reaching a quick contract and avoiding protracted negotiations.

When these proposals were given to the Union on or about May 13, 1991, Givel canceled the proposed May 14 session because the Union wanted to study the proposals given, but also because Givel insisted that ICLS present written counterproposals to all the Union's initial proposals. The Union insisted on this requirement even while it was giving its explanation of the proposals in the March sessions, and continued to insist on this over the next 7 months and 26 of the 29 meetings. Givel also canceled a May 28 proposed session for the same reason. He testified that the Union attended a proposed session on June 4, 1991, but that Management failed to appear as scheduled. As Michael Dewey explained, however, he had spoken to Steve Robinson on the morning of June 4, 1991, and advised him that there was no meeting. Both Morales and Ares denied the Union's contention that this session had even been agreed to.

The next session that did occur was on May 21. Ares gave ICLS' ''official response'' to the Union's contract proposals, because the Union now had the benefit of ICLS' counterproposals. Ares declared that certain union proposals remained too extreme and others he had counterproposals for that night or would be giving additional counterproposals later. Frost and others became obstreperous while Ares was explaining that ICLS would not accept the concept of a ''hiring committee'' of bargaining unit members and that hiring was the exclusive province of Management. Frost interrupted saying that Ares could not tell them what to do and continued with similar interruptions. When the ICLS committee took a break because of these interruptions, Givel advised Ares that he ''understood'' the problem, but could not commit for the deportment of the other members, nor could he speak for the other members of the union bargaining team. When the session resumed, Ares asked each member if they would agree to the proposition that each party would allow the other to speak without interruption or obstreperousness. After they all agreed, Ares continued his explanation concerning all of the union proposals. Again, however, accusations were made by the Union that Ares was failing to bargain in good faith because he had not given full written counterproposals to all of the Union's initial language proposals.

Prior to the next bargaining session, Ares contacted Givel in an attempt to schedule another bargaining session, to which Givel stated, ''[N]o, you didn't give us counters on all our proposals.'' Ares suggested a private one-on-one meeting to which Givel said, ''No.'' It was during this conversation that Ares told Givel that the negotiation was getting out of control and that Ares saw ''a real impasse'' in moving forward if the Union continued to insist on written counterproposals to everything. Ares then contacted Steven Robinson, union vice president, with the same request, to which he replied, ''no'' to private one-on-one meetings and

''no'' to bargaining sessions until the Union received counters on all their proposals. Then, Ares tried to contact Skotnes. Skotnes testified that he received no message that Ares had called. The Union does not dispute, however, that Ares did contact both Robinson and Givel, as he stated.

At the June 1991 ICLS board of directors meeting the Union marched into the board meeting with placards claiming ''unfair'' bargaining and ''Saddam Hussein tactics,'' that followed with newspaper coverage, while the Union refused to meet and bargain. Givel conceded that the disparaging ''Saddam Hussein'' placard was at that public demonstration and carried into the board meeting.

At the July 25 meeting, the Union advised ICLS that it was setting a ''target'' of August 29, 1991, as the date when the parties would reach a collective-bargaining agreement. ICLS immediately agreed in principle with August 29 as a target date for completing negotiations and set up numerous negotiating sessions to try to meet that goal. The Union also requested that the sessions be extended in length from 4 to 6 or more hours. Ares agreed that the sessions could go longer than 4 hours, as they had already in fact done, although this was in direct contravention to the written ground rules, which state that, ''negotiation meetings will normally be scheduled for a 4-hour session, but actual negotiations can be less if desired.'' During this session, the Union again declared that full written counterproposals were mandatory and again accused Ares of failure to bargain in good faith on that basis.

On July 30, 1991, one of the proposals being discussed was the Union's article on union business. In the May 14, 1991 proposals, ICLS had agreed to provide the Union with a bulletin board at every office on which it could post union related information. An issue arose with respect to ICLS' counterproposal, however, which excluded the placement of political and religious material on the bulletin board. ICLS had a concern that material of this nature could be offensive to clients, employees, visitors, and funding source monitors. The Union insisted on its right to post anything it chose on the bulletin boards. It accused ICLS of not understanding its position and trying to run the Union. When asked to explain, Skotnes referred to, as an example, Desert Shield and the Union's expectations to be able to post material against it. Givel testified that the bulletin board issue was ''a bone of contention.'' Skotnes also testified that this issue was ''a sticking point in the Union business article.''

Toward the end of the July 30 session, Frost again became obstreperous, accusing Ares of being ''asinine,'' and ICLS's resistance to the Union's position as being ''totalitarian'' and ''censorship.'' In the August 1 session, Frost testified that she apologized for calling Ares ''stupid,'' although she testified that ''I might have apologized for saying it. I didn't apologize for thinking it.'' At that same session, the parties were getting close to an agreement on the probation article. Givel advised ICLS that he would have to poll the union members prior to signing off on it. This procedure was not part of the written ground rules.[8]

On August 6, Givel announced that they had chosen not to poll the employees, without explanation. Discussion commenced on the grievance procedure. ICLS had proposed a ''loser pay all'' clause. Ares then reminded the Union about their August 29 deadline and advised the Union that it had to start dropping its extreme proposals to run the program.

At this point in the August 6 session, the Union once again became boisterous and obstreperous, when Givel told Ares that he was ''full of shit'' and engaged in other ad hominem attacks. As a result, the ICLS bargaining team left the room, as now a third disruption in negotiations had occurred. The ICLS team was waiting in the hotel lobby when Skotnes came out. Ares had a discussion with Skotnes to persuade him to assist in taking control of the negotiations. Skotnes stated that he had no authority to do so and that he simply came when he was called. As Skotnes testified, ''On August 6th, he [Ares] was encouraging me to talk to him one-on-one about negotiations.'' Ares viewed Skotnes as ''the man I would look to in a normal negotiation.'' Skotnes steadfastly refused, however, to engage in any such discussions with Ares. After this, Ares advised Givel in a side meeting that the negotiations were going to an impasse as a result of these disruptions. He then proposed the one-on-one ''side bar'' process to which the Union agreed.

This resulted in the second change to the ground rules agreement.

Later that evening, the ''sidebar'' sessions began. These sessions were private meetings between Ares and two union members, typically Givel and Jauregui. From that date through the August 19, 1991 session productive negotiations occurred. The only signoff, promotions, occurred while the ''sidebar'' process was in place. Throughout that time, Ares pushed the Union to sign off on numerous other articles including, grievance procedure, discipline and discharge, performance evaluations, no strike/no lockout, seniority, union recognition, nondiscrimination.

On the August 15 session, ICLS presented its management rights proposal, one which it insisted on throughout the course of bargaining. According to Respondent, this proposal was far from draconian, given the fact that ICLS itself had modified it through other proposals concerning discipline and discharge, performance evaluations, grievance procedure, layoffs, promotions, and related articles.

On August 21, Ares contacted Givel by telephone. He advised Givel that because the Union's self-imposed deadline was little more than 1 week away, the following day's bargaining session should be the last on noneconomic issues. Givel testified that he recalled this communication by Ares. Rather than being cooperative, the Union's attitude changed on August 22 to hostility. They accused Ares of ''take backs'' between the sidebar sessions and the general sessions. The Union then unilaterally ended the sidebar sessions. It was then that the Union presented a proposal labeled, ''Article 59 Severability; Savings; Separability; Modification; Non-derogation; Incorporation.'' Section 3 of that proposal incorporated over 50 sections of the ICLS personnel manual and the ICLS equal opportunity policies. None of this had been submitted in the Union's original proposals nor had there been any discussions of ''incorporation'' of the ICLS personnel manual which, in many sections, otherwise modified and changed the original proposals of the Union. Moreover, at the end of this evening, the Union presented by Givel's count 10 or more additional proposals. Ares testified that those proposals were presented after midnight and at

[8] After some debate, it became clear that the parties had begun negotiations only on the premise that all agreements were to be in writing, subject to agreement on an complete contract.

least one counter on discipline and discharge was presented at 1:15 a.m. Although Givel testified that this did not include ''take backs,'' he later stated that there were not any ''for the most part.'' As the analysis of the Union's proposals prepared by Dewey clearly indicate there were extensive take backs and substantial new proposals, especially considering the ''Article 59'' supplement from the personnel manual. Morales properly characterized these August 22 proposals by the Union as a ''whole new contract'' from the Union.

As a result, on August 26, 1991, ICLS, through Morales, sent a letter to the Union expressing its disappointment with the Union's actions. ICLS also declared its desire to resume negotiations, however, offering to meet on September 4 or 5 and advising the Union it would present economic proposals to the Union to ''encourage good faith negotiations that will also lead to an agreement on all unresolved language proposals.'' (Jt. Exh. 18.) In response, on August 28, 1991, Givel sent a letter outlining some 37 or more areas in which the parties had failed to reach agreement. Givel continued to demand the Union receive counterproposals stating, ''we request that you provide us with an inter- and intra-Article compromise package in the next five working days that reflects all of the issues that we outlined above.'' Curiously, Givel continued to insist on this demand despite the fact that Skotnes testified that he did not believe that it was necessary. In this August 28, 1991 letter, Givel stated the Union ''reestablished some of its prior negotiating positions,'' explaining that this was due ''to management's intransigence on the bulletin board issue.''

On September 5, 1991, ICLS presented a package of economic proposals to the Union and explained each proposal in detail. Ares advised the Union that ICLS' economic package included proposals averaging ''15 percent wage increases in the first year,'' 22 to 23 percent over the next 3 years and included flextime. He also requested a response to ICLS' August 15 management rights proposal, but received none. The Union refused to discuss these proposals or even to ask any questions. Instead, the Union stated it wanted written counterproposals on all previous union noneconomic language proposals and charged a violation of the ground rules written ''contract.'' At this session, Robinson stated that he believed the parties were ''ninety percent there,'' although it was clear from Givel's letter of August 28, 1991, that the parties had failed to reach agreement on all issues except one. At this meeting, Skotnes asked whether this was ICLS' last, best, and final offer. Ares said, ''no,'' but it was getting close and they wanted to see some movement from the Union.

On September 10, ICLS presented proposals concerning leaves of absence, which the Union also deemed to be ''economic'' issues and therefore refused to discuss. During this session, as with the subsequent sessions, noneconomic issues continued to be discussed. As Morales stated, and Ares confirmed, at no point had ICLS demanded that economic issues only be discussed on and after September 5, 1991. During the September 10 session the Union also proposed additional language concerning the ''bulletin board issue.'' The Union characterized this proposal as one of its most important and continued to insist that it be allowed to put any information or material on the bulletin board that it saw fit. The Union's proposal on that date allowed the employer to request to remove material deemed offensive only for the shortest possible time, but to put it back up as soon as the visitors left. ICLS again requested a management rights proposal from the Union only to be again told none would be forthcoming until ICLS responded to Givel's August 28 letter and provided full counterproposals to all of the Union's initial proposals. In his testimony, Skotnes confirmed that ICLS conveyed ''strongly they wanted a management rights proposal.'' Skotnes advised ICLS that ''whatever is left is what you get.''

In the September, November, and December sessions the management rights proposal was discussed. In a memorandum dated November 5, however, the Union indicated that they would provide a management rights counterproposal only in return for ''management's written counter proposals on transfers, job descriptions and HandsNet.'' In that same memorandum, the Union requested ICLS' counterproposals on health insurance and pensions, economic proposals that the Union had insisted they would not discuss until the language issues were resolved. In the November 5 meeting, Ares requested a response on management rights only to be told there would be none until ICLS responded to Givel's August 28 letter. Ares replied, ''[B]ased on the serious proposals we had made, you can't be serious.'' In response, the Union then provided a handwritten 18-word management rights proposal, which Ares commented that he deemed to be unacceptable.

The Union then proposed a ''paragraph by paragraph'' approach to sign offs, which ICLS rejected. Although Skotnes disputed that the Union proposed ''paragraph'' signoffs on September 5, he ultimately admitted that the Union had, in fact, made this proposal. With that, the Union stated that management rights was therefore ''off the table.'' Discussion of management rights did not occur again until the December 11 presentation of the ''New Mechanism,'' in which the Union conditioned management rights on ''substantial progress on all other articles that we are now presenting in this new comprehensive package. If such progress does not occur, then we will not sign off on this management rights clause and it will, unfortunately have to be taken off the bargaining table.'' As Skotnes testified, ''[M]anagement rights hinges on what's expressly written in the rest of the document.'' He later admitted that all of the items listed as ''management rights'' in the December 11 version of the Union's proposal were modified or restricted by the agreement.

Another proposal on which significant discussion occurred during this time period was grievance procedure. ICLS had steadfastly maintained that issues of attorney competence should not be part of the arbitration process in the grievance procedure. On November 6, 1991, however, ICLS presented a proposal including this issue in the grievance procedure but modifying the choice of arbitrators from the Federal Mediation and Conciliation Service (FMCS), to the Judicial Arbitration and Mediation Service (JAMS). ICLS argued that this change was necessary because JAMS arbitrators were retired superior court judges who could more capably assess issues of attorney competence than FMCS arbitrators, who were not judges and not necessarily even lawyers. Furthermore, ICLS argued that the Union was ''grievance happy,'' given its experience with the Union's having filed more than 13 unfair labor practice charges and over 100 grievances during the course of its existence at ICLS. As both Skotnes and Ares testified, this issue was never resolved by the parties despite

discussion throughout the November sessions and in the December 11 session, prior to the Union's presentation of the ''New Mechanism.''

Ares and Morales testified that on December 11, at the end of the meeting, the Union presented this ''New Mechanism,'' which was represented in the memorandum attached to it to be ''a new comprehensive package.'' Skotnes testified that this ''New Mechanism'' was presented with the hopes of showing ''significant movement'' on the part of the Union, but which again incorporated previously unexplored sections of the personnel manual and modifications to some articles. As Skotnes testified, this December 11 package included article 11 on case acceptance, which provided that the employee case handlers had the right to accept or reject any client case by a majority vote. This is the same proposal it had made initially. On that evening, although requested to explain its new package, the Union did not explain any of the changes to these proposals. After reviewing it, however, Morales noted that the one sign-off, promotions, was absent from this ''comprehensive'' proposal. Moreover, as Dewey's analysis demonstrates, the ''significant movement'' was only a change in form rather than substance. Morales later characterized this ''New Mechanism'' as a ''third collective bargaining agreement'' presented by the Union, due to the significance of the unexplained modifications.

At the December 16 session, the Union requested that ICLS bargain over a yearend bonus. This ''bonus'' was not intended by the Union to be part of the collective-bargaining agreement, as both Skotnes and Givel confirmed in testimony. This proposal was rejected by ICLS for this reason and for the Union's continuing refusal to discuss any other economic issues.

On December 17, Ares responded to the ''New Mechanism'' ''proposal by proposal.'' He testified that he was ''very, very disappointed'' with the ''New Mechanism'' and told the Union that although there were language changes, ''it is still management rights taken over by the Union.'' ICLS then gave counterproposals on discipline and discharge, probation, seniority, nondiscrimination and performance evaluations. Although counterproposals to ICLS' counters were thereafter discussed, Skotnes testified that he was disappointed over these counterproposals by ICLS because there were no significant changes in response to the ''New Mechanism.'' Ares responded by telling the Union that ICLS had been consistent in presenting proposals—that ICLS had offered a basic agreement with ''all the basic rights a union should have,'' with the employer maintaining management rights and the Union getting ''a big economic package.'' Ares testified that ICLS had not changed some of its counters because there was no real movement in the Union ''New Mechanism'' proposals, which still sought the management and control of ICLS. The Union again asked Ares whether he had given ICLS' last, best, and final offer. Ares told the Union ICLS was ''getting there.''

Thereafter, ICLS advised the Union that it was cancelling a tentatively scheduled session for December 19, but proposed four dates following the holidays commencing with January 7, 1992. In the January 7 and 8 sessions, ICLS continued to discuss ''noneconomic'' proposals.

Following discussion of noneconomic proposals on the January 8 session, Henry Ares began discussing the ICLS health care proposal. That proposal had been previously requested by the Union in correspondence, at the bargaining table and by Givel at the December 1991 ICLS board meeting. It included employee participation by paying 30 percent of the health insurance premiums in order to effectively reduce the premium payments for employees with dependents. As Ares was explaining the background of the proposal and how it would work, Frost once again interrupted him, asking if employees would be required to pay a portion of the premium under this proposal. Ares responded that it would and attempted to continue the explanation until he was interrupted again by Frost, stating that the proposal was ''ridiculous'' and making other disruptive comments. Ares requested Frost to hold her questions until he finished his presentation. The disruption continued. Ares then gestured to Givel and others on the union bargaining team for their assistance. Frost continued to be disruptive. Ares then asked Givel, to please control Frost to no avail. Givel responded nonverbally by raising his hands out to his side, palms up, and then said Frost was free to speak anytime she wanted to. Ares said he would finish the health care proposal presentation, then the meeting would be ended and continued another night. Frost became louder. Because this disruption had now occurred for the fourth time despite each union bargaining team member's assurance that it would no longer occur, Ares stated that the session was ended. Ares and the ICLS team got up and began to leave the room. With Ares near the doorway, Frost exclaimed that Ares was ''full of shit.'' Ares, who was leaving, carrying books in one hand, stopped, and raised the other hand, palm up, and looking at the union team, asked whether they had heard her remark. He then asked Frost to repeat what she had said. Frost angrily got up from the table, taking her coat and papers with her, saying that no one could tell her what to say, and immediately left.

It is at this juncture that there is a conflict in the testimony: Frost testified that Ares approached her and got within a foot of her while demanding that she repeat what she had said. Ares said he was about 7 to 8 feet away. Morales' ''bench'' estimate was 5 to 7 feet. Dewey testified that ''there was no assault.'' Frost stated that this ''incident'' somehow constituted an ''assault,'' which later caused her to have a rash. She admitted that everything Ares testified to was indeed said, however, and more: when Ares asked for an apology, she replied, ''when pigs fly.'' Despite the fact that Frost claimed that she was ''assaulted,'' however, and Givel made the same assertion, both he and Robinson apologized to Ares for her outburst shortly after this meeting. Moreover, Givel called out an apology to Ares from the bargaining room. Despite this alleged ''assault,'' no one made an effort to restrain Ares or accuse Ares that evening, but instead apologized to him. The Union did not ever bring this ''incident'' up as a problem at the next meeting.

As a result of this pattern of significant disruption of the bargaining process, ICLS advised the Union that there would be no further bargaining sessions at that time until Frost apologized for her unprofessional conduct. Dewey testified that he was advised that Frost would apologize at the previously scheduled January 30 meeting. Given the fact that there had been no response by the Union until that date, however, the meeting at the hotel had already been canceled by ICLS, as memorialized in a letter dated January 30, 1992, by Dewey. ICLS offered three dates to resume negotiations. An exchange of correspondence then ensued. In a response

letter also dated January 30, Robinson indicated that Frost would not apologize. Further, he accused Ares, whom he described as ''your $100 an hour consultant,'' of ''physical intimidation'' and assault. The Union's letter was circulated to all union members and the ICLS board committee. On February 6, Dewey stated that, due to the refusal to apologize, ''no further meetings will be agreed to by ICLS at this time.'' That letter further cited to the disruptive and counterproductive behavior exhibited by the union bargaining team and referred to the warnings ICLS had given the Union about any further disruptions.

As Morales testified the disruptions were a waste of time and money. She said that she believed ICLS was justified on insisting that the Union control disruptions, given the late stage of the negotiations. Morales termed the Union's publicity about the incident ''very insulting. It was a flat out lie.'' During the hiatus, Morales then received numerous letters from all over the country, urging her to fire Ares. The letters were filled with accusations against ICLS, which was criticized for not giving higher wages, although ICLS had in fact offered substantial wage increases and a benefits package months earlier. Givel testified in January 1992 a strike petition was signed by a majority of the bargaining team members that threatened management with a strike.

On February 12, 1990, Givel sent a letter containing an ad hominem attack on Ares, including allegations that he was a ''$100/hour Union-busting business consultant'' who ''proceeded to maliciously and threateningly assault the 62 year old female member of our bargaining team . . . .'' Incongruously, however, that letter also stated, ''we related to your $100/hour business consultant, that if it meant anything, we are sorry.''

Despite these circumstances and despite the fact that Frost refused to apologize for her conduct, in a letter dated March 5, 1992, ICLS accepted the Union's offer to negotiate on March 19, 1992.

On March 9, Skotnes requested postponement of the NLRB hearing on the consolidated cases set for March 17, 1992, in order to file additional unfair labor practice charges, including charges of failure to bargain in good faith. Givel stated that this particular charge dated back to November 1991, some 4 months earlier, as well as the January 8 ''incident'' involving Evelyn Frost, which occurred 2 months earlier. On March 17, 1992, 2 days before the scheduled bargaining session, the Union filed an unfair labor practice charge, alleging bad-faith bargaining.

At the commencement of the March 19, 1992, bargaining session the Union was presented with all of ICLS' contract proposals in one package. Management attorneys from the other ICLS offices attended this session as observers. Irene Morales explained that, due to the Union's public comments that an ''assault'' had occurred, ICLS managing attorneys had approached her requesting to know what was happening in negotiation sessions. As a result, she invited the managers to attend this negotiation session to see for themselves.

Ares commenced the session with a detailed explanation of the package, including the changes to the proposals, the additional proposals, and minor revisions to other proposals. Ares told the Union an agreement was needed, that ICLS would be flexible, but would insist on retaining management rights. The Union asked no questions, made no counterproposals, and did not even attempt to resume discussion on proposals that had been discussed on the January 7 and 8 sessions. Despite the fact that the Union ''understood what was there,'' it simply refused to bargain in the face of ICLS' insistence and encouragement to stay and negotiate. What ensued was the Union's announcement that it was going home and would not bargain that evening. A series of caucuses occurred in which ICLS hoped to foment negotiations. During one of the caucuses, Ares advised Morales that she should prepare notes and attempt to talk to the Union to convince them to negotiate. When Ares addressed the Union again, he encouraged questions, but got none. He emphasized that ICLS had offered substantial wage increases: ''You don't like 15 percent wages on [sic] the first year; over three years 23, 24 percent, when everyone else is getting three percent . . . You don't want attorney bar dues paid?'' The Union refused to negotiate.

At the last portion of this bargaining session, Morales spoke to the Union. When she began speaking, she ''begged them basically'' to stay, there was laughter from the other side of the table. She encouraged the Union to offer counterproposals throughout the course of her discussion. Morales referred to the types of proposals ICLS had made, such as wages, flextime, and grievances. She repeatedly asked the Union to stay and bargain. The Union's response was to mock the presentation. At the end of this talk, Skotnes observed, ''You are not in touch with reality. Nice speech.''

After repeatedly asking the nion team if they were willing to bargain that night, Morales declared that this package was ICLS' ''last, best and final offer.'' Skotnes asked Morales if she was serious and whether she even knew what was in these contract proposals. He then asked Ares if this was indeed the Company's position. Ares confirmed that this would be the last, best, and final offer. Ares also asked Skotnes if he would stay and bargain that evening, to which he replied, ''no.'' The last question posed to the Union was whether they would present any counteroffers that night to ICLS' contract proposals, to which they also replied, ''no.'' This session ended at approximately 8:30 p.m., despite the fact that numerous other sessions had lasted well after 12 p.m. Both Ares and Morales testified they were certain of impasse at this point.

Given this state of affairs, ICLS sent a letter, by Morales, recapping the events of March 19, the status of the proposals and offering the Union until April 15, 1992, to accept the last, best, and final offer. In response, in a letter dated March 31, 1992, Skotnes only requested additional dates for bargaining. No member of the union bargaining team gave any reply to Morales' March 24 letter, given the fact that Skotnes was not a member of that team and had consistently acted only as an advisor to the bargaining team members. Therefore, on April 13, 1992, Morales directed a second letter to the Union advising them of the April 15 ''deadline'' and requesting acceptance of the March 19 proposals by that date. Again, there was no response by the union bargaining team. In fact, from March 19, 1992, to the commencement of this hearing on March 2, 1993, there has been no correspondence directed to any member of the ICLS bargaining team by the Union.

Instead, Givel recommenced efforts to involve ICLS Board Chair Joseph Cohen. Givel called Cohen on or about May 4, 1992, and discussed the status of negotiations with him. According to Givel, Cohen requested a ''recap'' of bargain-

ing. Both Givel and Skotnes were well aware that Cohen was not a member of the ICLS bargaining team, however, nor was it their stated intention to bargain with him at that time. What resulted was a letter by Givel containing some 27 areas in which the parties were not in agreement on language proposals and 22 economic provisions in which no agreement had been reached. In response, Cohen pointed this out to Givel and directed him to, ''please contact Irene Morales, the leader of the Management Negotiation Team with any other concerns you may have with respect to negotiations.'' No such contacts through the commencement of this hearing have been made. Furthermore, it is clear from Skotnes' letter to union members dated October 23, 1992, that the Union's position remained unchanged from March 19, 1992, and as early as December 11, 1991.

In the meantime, the Union continued its campaign of involving third parties that had been so disruptive of the bargaining process previously. On March 17, 1992, Frost sent a letter to State Assemblyman Eaves, just 2 days prior to the recommencement of negotiations. That letter cited managerial problems and unspecified unfair labor practices that caused ICLS to prepare extensive responses for State Assemblyman Eaves' office and ICLS' funding source, the State Bar of California Board of Governors, and Legal Services Trust Fund Program. Letters were written to California State Senator Presley and to California State Assemblyman Clute, requiring additional hours spent in responses. These letters suggested a ''mediation'' process, outside of collective bargaining as contemplated by the National Labor Relations Act, and again cited ICLS for unspecified improprieties. Most recently, on January 19, 1993, ICLS met with, and was required to reply to, United States Congressman George Brown concerning the same allegations. Moreover, in a newspaper article, the union representatives stated that ICLS was under investigation for other improprieties, which was untrue. The upshot of all of these investigations was no finding of any wrongdoing on ICLS' part.

On or about March 17, 1992, Roy King, then managing attorney of the San Bernardino ICLS office, requested that Frost remove a union button at the San Bernardino office. Frost testified that she had used this button to hold her blouse together on that day, and for St. Patrick's Day because the button was green. Frost stated that she had worn the button on previous occasions but was not told to remove it. On this occasion, King asked Frost to remove the button in a kitchen area of the San Bernardino office.

Frost acknowledged that the ICLS office she works in is a law office; that members of the public pass by the rooms in which the secretaries work; and that numerous clients and other members of the public come into the San Bernardino office. Frost was on duty at that time and was never subjected to any form of discipline for having worn the button. As Morales testified, secretaries do come into routine contact with the public in ICLS offices. Frost regularly substituted as a receptionist, was an office notary and was at times assigned to other offices.

Morales testified that early in her career at ICLS she was advised of the policy against wearing buttons of any political nature. The reason for this is that clients come to ICLS with a variety of legal problems and from a variety of social, religious, and political backgrounds. Morales testified that clients periodically come into ICLS' offices with complaints against labor unions. As a result, it has been and continues to be the ICLS policy that employees do not wear buttons of any political nature or of any other type. The intention is not to exclude the union buttons per se, but any and all buttons, given the nature of the work done at ICLS.

On December 5, 1990, Irene Morales, executive director of Inland Counties Legal Services, issued to the staff of all ICLS offices a document entitled ''Standards for Supervision of Legal Work.'' This ''Standards Memorandum'' dated December 4, 1990, was the product of considerable time and effort.

On August 7, 1990, Morales called a program management committee meeting of ICLS' five branch office managing attorneys, following malfeasance by a paralegal in the ICLS program who had been fired for misconduct involving the unauthorized practice of law, fraud, theft, and deceit. Investigation revealed that this paralegal had interviewed numerous people, most of whom were poor, elderly, or spanish-speaking, as are many of ICLS' clients generally. Some of these people were eligible for legal services through ICLS and others were not. All believed that they were being provided legal services by an attorney or that the work product of this paralegal was being supervised by an ICLS attorney. Still others believed that ICLS was assisting them because they came to know the paralegal through the paralegal's employment at ICLS. Some said that they paid money for services that were required by government funding sources to have been rendered for free. Some Spanish-speaking people thought the paralegal was an attorney because the word ''advocate'' was used by the paralegal in correspondence and, in spanish, the word for lawyer is ''abogado'' or ''abogada.''

The investigation revealed that this problem was extensive and ICLS received numerous calls from people who said they were ''clients'' of the program, but who were not registered with ICLS. Several victims were accompanied by Morales and a managing attorney to file police reports involving these allegations of misrepresentation and theft.

As a result of this incident, and its far-reaching consequences, the program's major grantor, the Legal Services Corporation (LSC), began an investigation of the problem, after Morales provided information to LSC concerning the circumstances surrounding these incidents, as she is required to by LSC's rules and regulations. In a letter dated November 6, 1990, Susan Sparks, manager, monitoring, compliance and review division of the Legal Services Corporation, directed Morales to give a detailed report including all pertinent documents surrounding the incident. That letter required Morales to give a response by November 20, 1990.

On November 20, 1990, Morales asked for a second copy of the previous letter from LSC, as well as additional time to respond. The November 6 letter from Sparks required ICLS to provide detailed information on 11 separate topics, including efforts by ICLS to prevent a recurrence of these problems. In the interim and before Morales' response to LSC, the standards memorandum was issued by ICLS on December 5, 1990.

On December 10, 1990, Morales sent ICLS' response to Sparks. In part, the response noted that ''the program began to develop procedures for improving case supervision and apprising program clients of paralegal representation'' referring to and attaching a copy of the standards memorandum. The letter also noted that nonattorneys are not allowed to

provide legal work or advice in California, nor does California license paralegals, and as a result, it is essential that all legal work be supervised by an attorney.

The Union alleged that the promulgation of the standards memorandum was in response to its letter of December 2, 1990, concerning new contract proposals entitled ''Community Worker, Graduate Law Clerk, and Paralegal Job Security.'' Evelyn Frost, a legal secretary in the San Bernardino ICLS office, testified that she herself would sign letters prepared by attorneys but, following the issuance of the standards memorandum, she was required to find the attorney to sign the letter, an effort that took approximately 15 additional minutes during each workday. Frost did not testify that she worked any overtime or that this requirement changed the basic nature of her work. Neither Frost nor Michael Givel, a paralegal II (and Workers Unidos President), testified that ICLS had a past practice of allowing, as a matter of policy, all legal secretaries throughout the five branch offices to sign legal correspondence. Morales testified that ICLS' past practice ''has been that attorneys and paralegals sign correspondence,'' which is consistent with standard law office practices.

Givel testified that, ''under the direct supervision of licensed attorneys, I draft pleadings, I do administrative hearings, I do client intake and the like.'' Later, Givel testified that the standards memorandum represented a change in ICLS past practice because bargaining unit paralegals were assigned to bargaining unit lawyers who now had ''semi-supervisorial capacity and powers over bargaining unit paralegals regarding their work.'' Givel vaguely alluded to an increase in ''the actual paperwork and so forth that occurred and review that occurred,'' with a resultant increase of 2 to 4 hours per week. Givel later admitted that, although this was on average 2 hours more work per week, he did not stay late or arrive early any more than ''once in a while.'' In fact, Givel only worked a 30-hour week, and his overtime records did not indicate any appreciable change in overtime following the promulgation of the standards memorandum.

Givel also testified that counsel and advice (CAO) forms were required to be initialed by an attorney, and documents and correspondence were to be reviewed by attorneys, which constituted another change in past practice. Although Givel testified about the supposed impact of this standards memorandum on paralegals in one branch office, no testimony was presented by any bargaining unit attorney or other clerical staff concerning the alleged impact of this memorandum on bargaining unit attorneys.

With respect to Frost, Givel stated that she must now search out Givel or an attorney for a signature on correspondence. Givel stated, however, that ICLS has always had a work order form in which paralegals and attorneys could use in which they could indicate, ''work to be done whenever . . . work rush, due today or due as soon as possible . . . and there's an open ended box at the end.'' Thus, this form can be used to indicate instructions concerning the attorney's or paralegal's availability or need for signature by them that day.

D. *Discussion and Conclusions*

1. The request for information

The first issue to be decided concerns the request for information as set forth in a letter dated May 15, 1992. The Union requested that it be provided with certain information, specifically, a current unit census with each employee's salary, hire date, date of birth, gender, residential zip code as well as information related to each employee's existing health care coverage. Terry Skotnes testified that Respondent has never responded to this information request. Respondent never informed the Union, or asserted at trial, that any of the requested information was unavailable, or would have been onerous or burdensome to collect.

Indeed, I find no warrant for Respondent's failure to provide the information requested, and as a consequence, conclude that the failure to do so was, and is, illegal.

In dealing with a certified or recognized collective-bargaining representative, one of the things which employers must do, on request, is to provide information that is needed by a bargaining representative for the proper performance of its duties. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1505 (1976). In each case, the inquiry is whether or not both parties meet their duty to deal in good faith under the particular facts of the case. *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956). Processing grievances is, as argued by counsel for the General Counsel, clearly a responsibility of a union, and an employer must provide information requested by the union for the purposes of handling grievances. *United-Carr Tennessee, a Division of TRW, Inc*., 202 NLRB 729 (1973). The legal standard concerning just what information must be produced is whether or not there is ''a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative.'' *Bohemia, Inc*., 272 NLRB 1128 (1984). The Board's standard, in determining which requests for information must be honored, is a liberal discovery type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016 (1979). The Board, in determining that information is producible, does not pass on the merits of the grievance underlying a request such as was made in this case; and the union is not required to demonstrate that the information sought is accurate, nonhearsay, or even ultimately reliable. *W. L. Molding Co*., 272 NLRB 1239 (1984).

Counsel for the General Counsel argues that Respondent failed and refused to provide the Union with any of the information sought in the Union's request and seeks a remedy this refusal.

There appears to be no dispute that Respondent has failed to respond to the Union's letter requesting this information. Indeed, I see no argument concerning this matter in Respondent's brief. Accordingly, I find and conclude that In failing and refusing to provide the information requested, which is clearly presumptively appropriate, Respondent violated Section 8(a)(5) of the Act. I shall order an appropriate remedy for such illegal action.

2. Frost's union button and its removal

On or about March 17, 1992, at Respondent's San Bernardino office Supervisor Roy King requested that Evelyn Frost remove a union button.

Frost acknowledged that the ICLS office she works in is a law office; that members of the public pass by the rooms in which she and other secretaries work. Clients and other members of the public come into the San Bernardino office. Frost was on duty at that time and was never subjected to any form of discipline for having worn the button. As Morales testified, secretaries do come into routine contact with the public in ICLS offices. Frost regularly substituted as a receptionist, was an office notary, and was at times assigned to other offices. Morales testified that early in her career at ICLS, she was advised of the policy against wearing buttons of any political nature. The reason for this is that clients come to ICLS with a variety of legal problems and from a variety of social, religious, and political backgrounds. Morales testified that clients periodically come into ICLS' offices with complaints against labor unions.

Counsel for the General Counsel is quite correct in pointing out that Frost's right to wear a union button would normally be protected by the Board, pursuant to *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). That right is not an absolute right, however, and is subject to a ''special circumstances'' test. *Control Services*, 303 NLRB 481 (1991). Here, while bearing in mind the importance on not lightly circumscribing the ability of employees to communicate their union sympathies to one another, I find that Morales has shown the presence of special circumstances to warrant the direction to remove the button. The mere fact that the Respondent represents people in their disputes with labor organizations might not privilege such an action, but, when it is tied to the public nature of the Respondent's work, and its funding, I find that the need to avoid to avoid open displays of such partisanship has been made out.

Accordingly, I shall dismiss this allegation of the complaint.

3. The alleged assault

The facts of this incident are not recalled remarkably different by the two sides, except when it comes down to describing the distance between Ares and Frost, and the immediacy of the alleged threat he presented to her.

Ares was adamant in his assertion that he never got within 6–7 feet of Frost. Frost and Givel claimed that he came within a foot or so and seemed so angry as to be on the verge of striking Frost.

Contrary to the arguments of counsel for the General Counsel, I found Ares to be highly credible, not only with respect to the facts of this particular allegation, but with respect to his entire testimony.

Just the opposite, I found both Frost and Givel to be exceedingly poor witnesses. Frost seemed to be so motivated by anger that I would have great difficulty believing that she would restrain herself from an opportunity to exagerate and portray herself as victimized, no matter what the truth might be.

My assessment of the credibility of Givel is set forth concerning the surface bargaining issues, below.

Given the relative credibility of the witnesses for, and the witnesses against, the truth of these allegations, I have no hesitance in finding that these allegations are unproven. Accordingly, I shall dismiss them.

4. The alleged surface bargaining

The General Counsel does not contend that any single act, statement or proposal by Respondent from March 1991 through April 1992 constitutes a per se unlawful act or refusal to bargain in good faith. Rather, it is the General Counsel's position that Respondent's overall conduct, evidenced by many individual acts, statements, and bargaining proposals, demonstrated an effort to frustrate the possibility of arriving at any agreement.[9] As the Board stated in *American Meat Packing*,[10] and relying therein on its earlier decision in *General Electric*,[11] the task ''in bad-faith bargaining cases is to assess from the aggregate of a party's conduct whether that party's intent during bargaining was to reach agreement on the terms of a contract,'' or ''*which* reflects a cast of mind against reaching agreement . . . rather the serious intent to adjust differences and reach an acceptable common ground.''

Applying these maxims to the case at hand has proven difficult. This is because there are literally dozens and dozens of factual disparities between the testimonies of Givel, Frost, and Skotnes, who testified on behalf of the Union, and Ares and Morales, who testified on behalf of the Respondent. In the main, when there was objective evidence to support one side's version over the other's, the parties resolved the problem by means of a stipulation. The disputes that remain are for the most part not susceptible to objective resolution. In fact, in many of the instances, witnesses on the same side of the question recall and recount the incident at least slightly differently from one another. Thus, I confess my inability to resolve each of the myriad credibility conflicts one by one with any measure of confidence that I have done so correctly.

The same uncertainty is not present, however, when I view the totality of the picture. For I found both Ares and Morales to be credible witnesses. Indeed, Morales is one of those witnesses whose testimony seems to simply ring with both truth and accuracy.

Unfortunately for the General Counsel and the Union, the same cannot be said of either Givel or Frost. I have already stated my general impressions of the testimony of Frost; they are no less true regarding this issue of surface bargaining. Givel, while glib and articulate, was no better. In fact, Givel seemed at pains to show his scorn for both the processes of this trial and other participants in it. Although others testified he repeatedly exhibited a snearing smile of disbelief; although he testified with the same smile what in evidence, seemingly at what he thought to be the inanity of the questions he was asked. Thus, it requires no stretch of the imagination to see him as having been accurately portrayed by Respondent, as one who used the negotiation process as a vehicle to relieve himself of personal frustrations. That is not a conclusion reached by me, however, as it is not necessary to decide this case. I merely point out that a number of Re-

[9] *Atlanta Hilton & Tower*, 271 NLRB 1600 at 1603 (1984).
[10] *American Meat Packing Corp.*, 301 NLRB 835 (1991).
[11] *General Electric Co.*, 150 NLRB 192 (1964).

spondent's actions in the course of a year and a half of negotiations are more readily seen as reasonable responses to provocative behavior on the part of the Union's negotiators when one bears Givel's demeanor in mind.

The fly in this reasoning's ointment is the presence of Skotnes. Skotnes was not a liar or fabricator. Quite the opposite. Were it not for the strength of both the witnesses arrayed against him, I might well find that the testimony of Skotnes was sufficient to carry the day for the Union. In the end, I cannot explain many of the discrepancies between his testimony and that of Ares and Morales, except as honest mistakes, and failures of recollection. Neither, however, can I resolve them by resort to objective criteria. In the end, I am left to say that I must find, as I do, that Skotnes' testimony, impressive as it was, was insufficient to overcome that of Ares and Morales.

Thus, I conclude that counsel for the General Counsel has failed to carry his burden of proof regarding the surface bargaining allegations because I must resolve credibility conflicts between the two sides generally in favor of that version presented by Ares and Morales. Because I further find that they did not present testimony that admitted violations of the Act, but, instead, denied and explained away other evidence seeming to suggest violations of the Act, I must find that they did not engage in surface bargaining.

I accept as true the Respondent's evidence that it entered into negotiations willingly, and with a sincere desire to reach agreement on a collective-bargaining contract. And, given the evidence, I also accept as true the argument of Respondent to the general effect that over the months and months these negotiations dragged out, and given the willingness of the Union to resort to means other than bargaining to achieve its goals, it recognized a need to be quite cautious in dealing with the Union. I have little doubt that Respondent hardened its positions on such matters as management rights provisions, or employee bulletin board use, after seeing what it came to view as a penchant on the part of the Union to resort to political or public relations tactics and supporters.

I do not find that it was illegal, or wrong, for the Union to resort to such tactics as carrying out a demonstration at a board meeting of Respondent, or seeking support from politically powerful figures, or by instigating a letter writing campaign against Respondent by resort to newspapers. Nor do I find that there was anything wrong with resort to numerous grievances, and/or unfair labor practice charges at the time that the collective-bargaining process was getting underway. Indeed, as I must, I concede that it may possibly be that each tactic, each grievance, each charge, was justified. But, it remains true in my opinion that such tactics may well have, as claimed by Respondent, given Respondent pause and caused it to conclude that the Union's was more interested in street theater than in a resolution of the issues dividing the negotiators.

This is expecially true when it is recalled that the Union's proposals in reaction to Morales ''standards'' memorandum can easily be interpreted as evidencing a desire for employees to simply take over the management of the Respondent. Of course, I have no way of knowing just how serious the Union was in making such proposals as, for example, having employees review incoming cases to determine if the firm would take them. But, I can easily understand how Respondent became alarmed at being faced with such proposals, and reacted by tightening up its management rights proposals. Similarly, the claim that it constitutes an unfair labor practice on the part of management to insist that attorneys do attorneys' work (as Respondent showed was and is required by both the licensing authority of the State of California and its grantor, the Legal Services Corporation), seems to me have been well calculated by the Union only to have raised the very sort of response that it did from the Respondent, i.e., extra caution.

Similarly, the Respondent's response to the Union's tactics at the bargaining table seems well within the boundaries of permissible conduct. As counsel for the General Counsel points out, I concede that the Union's ''non-choirboy'' language is the sort of thing that must be anticipated will occur from time to time in negotiations, and will not be deemed to lose the protections of the Act for the speaker. That, however, is not the question here. No one has sought to discipline any employee for speaking to Respondent's representatives in a way that they objected to. Instead, as I see it, the management team simply put pressure on the union's team to do more to conduct the negotiations in a more civil manner before it would proceed. To say that the speakers are protected by the Act is one thing; to say that their opposite negotiators must smilingly accept being called ''full of shit,'' ''asinine,'' ''totalitarian,'' or ''stupid,'' is quite another. They are as free to speak back as the initial speaker is to keep saying things they find offensive and objectionable. In the end, it is up to the parties to find or work out means of expression that do not hinder the course of negotiations.

Ultimately, Respondent, after 29 formal meetings, and a number of informal meetings, after dealing with the grievances, the unfair labor practice charges, the ''theater,'' put a proposal on the table. Although the Union characterizes it as incomplete, I cannot so label it. It did not have each and every item in it that might be thought to be appropriate if someone else were to make the proposal. But, it cannot be called insubstantial. Among other things it called for liberal wage increases for the employees.

Given the long period of time the negotiations had gone on for, the number of meetings, the lack of success in negotiations to date, and the seriousness of the issues still dividing the parties, plus the inability of the parties to even be able to talk seriously with one another, I cannot say that the Respondent's determination that the talks were at an impasse in March 1992 was wrong, or outside the guidelines of *Taft Broadcasting.*[12] I find that they were at impasse at that time.

At that time, and since then, the Union has insisted that no impasse exists, and that it wishes to resume or continue negotiations. The Union has even expressed a willingness to be reasonable and flexible if the Respondent will by resume negotiations. As I view the Union's communications with the Respondent, however, the Union has failed to do enough to break the impasse, and compel the Respondent back to the bargaining table, as it could easily do. The Board has held that in order to break an impasse, a union's ''offer'' must be sufficient to enable a determination of whether or not it represented ''any change, much less a substantial change, from the [u]ion's prior position in negotiations with the [r]espondent.'' *Holiday Inn, Downtown-New Haven,* 300 NLRB 774 (1990). I find that there is no evidence in this

[12] *Taft Broadcasting Co.*, 163 NLRB 475 (1967).

case that such change, much less a substantial change, in the Union's position has occurred as to relieve the impasse.

I find and conclude that the Respondent has not been proven to have engaged in surface bargaining in violation of Section 8(a)(5) of the Act and I shall recommend dismissal of these allegations.

Summarizing all the above, I find and conclude that Respondent violated Section 8(a)(5) and (1) when it failed and refused to respond to the request for information from the Union, as set forth above.

It is further found that Respondent did not violate the Act in any other respect.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth above have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to industrial strife burdening and obstructing commerce.

V. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Inland Counties Legal Services, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Since on or about 1993 Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information as requested by the Union that is reasonably necessary to the performance of its duties.

4. The bargaining unit described below is an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

> INCLUDED: All employees including staff attorneys, graduate law clerks, paralegals, legal secretaries, clerk-typists, receptionist/clerk typists, accounting clerk/secretaries, program librarians and administrative legal secretaries employed by the Respondent at its locations in Blythe, Indio, Montclair, Riverside, San Bernardino and Victorville, California.
>
> EXCLUDED: Confidential employees including administrative assistants, managerial employees including bookkeepers, temporary employees, guards and supervisors including executive directors, senior administrative assistants, full-charge bookkeepers, controllers and managing attorneys, as defined in the Act.

5. The above unfair labor practices have an effect on commerce as defined in the Act.

6. Respondent has not violated the Act in any other respect.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, Inland Counties Legal Services, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with the Union as the exclusive bargaining representative of its employees in the appropriate bargaining unit set forth below, by failing and refusing to provide information necessary to the Union's performance of its duties.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the above-named labor organization with the information requested in its letter of May 15, 1992, as specified in paragraph 16 of the third amended consolidated complaint, as further amended at the trial.

(b) Post at its offices and facilities in Blythe, Indio, Montclair, Riverside, San Bernardino, and Victorville, California, copies of the attached notice marked ''Appendix.''[14] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[13] All outstanding motions, if any, inconsistent with this recommended Order are hereby denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''